IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9998 of 2005

Between:

N.V. Muralidhar S/o. Satyanarayana
The Deputy Educational officer, Kavali, Nellore District.

..... PETITIONER

AND

1 The District Educational Officer, Nellore District, Nellore.
2 The Commissioner & Director of School Education, Andhra

Pradesh, Hyderabad.
3 State of Andhra Pradesh, Rep. by its Secretary to

Government, Education Department, Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ, order or direction in the nature of writ of Mandamus or otherwise declaring the proceedings Rc.No.1677/F1-3/99, dt.17-02-2000 issued by the 2nd respondent as arbitrary and illegal, violating Art.14,16 and 21 of the Constitution of India and set aside the same including order of the Hon'ble Tribunal in O.A.No.3212/2000, dt.18-4-2001 as well as consequential proceedings Rc.No.649/A2/94-1,dt.4-7-2001 issued by the 1st respondent and issue consequential direction directing the 1st respondent to restore the appointment of the applicant as junior as otherwise, the petitioner will be put to irreparable loss.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH
Counsel for the Respondents: GP FOR SERVICES II

The Court, at the admission stage, made the following:

ORAL ORDER:- (PER GB, J)

The writ petition is filed assailing the order, dated 18.04.2001, passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.3212 of 2000.

2. The petitioner is the applicant before the Tribunal. He was appointed on the compassionate appointment scheme as Junior Assistant on 13.04.1994 consequent on the death of his father N.Satyanarayana who worked as Head Master of B.R.S. Upper Primary School, Kapparallathippa, Bogole Mandal, Nellore District. The appointment order was issued on 13.04.1994. However, the District Educational Officer passed orders on 26.11.1997 that the petitioner should acquire necessary degree qualification within two years and the date was finally extended up to 18.4.1999.

3. It is the case of the petitioner that he has completed all the subjects in degree course (B.A) except one subject i.e., Political Science, for which he appeared on 4.4.1999. The result was not declared till 18.04.1999, but it was declared in September, 1999. In the meanwhile, he was reverted as Attender by proceedings dated 17.4.1999. Thereafter, he made representation to the authorities to the effect that he has completed the Graduation even as on 4.4.1999, and therefore, he should be continued as Junior Assistant. But, the said request was rejected on 17.2.2000 on the ground that since he has already been working in the lower post he should take his chance for promotion as Junior Assistant as per A.P.M.S. Rules only. The said order came to be challenged in O.A.3212 of 2000, and the same was disposed of by the Tribunal with the following direction:

> "In view of the facts and circumstances of the case and considering the submissions made, as the applicant has been reappointed as Attender on the ground of not acquiring the requisite qualification within the stipulated time and as the applicant has now acquired the requisite qualification, his calim for reappointment as Junior Assistant which he has been holding since 1994 has to be considered again by the concerned official respondent. Therefore, the O.A. is disposed of with a directionto the official respondents to consider reappointment of the applicant as Junior Assistant within a period of 4 weeks from the date of receipt of this order. In view of the disposal of the O.A., M.A. is also disposed of."

4. However, the petitioner did not file the writ petition immediately thereafter, but he filed a contempt case before the Tribunal alleging violation of orders of the Tribunal. However, when the contempt case was filed the authorities issued orders dated 4.7.2001 observing that the petitioner will be considered for the post of Junior Assistant after completion of 5 years of his service as Attender subject to availability of Junior Assistant vacancies. Basing on this order, the contempt case was closed. Therefore, the petitioner filed the present writ petition challenging the orders of the Tribunal dated 18.04.2001.

5. Learned counsel for the petitioner submits that the Tribunal has conceived the scope of relief claimed. He submits that when the petitioner was permitted to complete the graduation by 18.04.1999 he appeared for the remaining subject of Political Science on 04.04.1999 and subsequently passed the same and the result was declared in September 1999, therefore, he was deemed to have completed the graduation by 04.04.1999 and this aspect was not concentrated by the Tribunal and only disposed of the case directing the authorities to consider the representation of the petitioner for reappointment as Junior Assistant. Hence, learned counsel for the petitioner submits that the order of the Tribunal is liable to be set aside.

6. Learned Government Pleader submits that the very representation is wholly misconceived and barred by time. The order was passed by the Tribunal on 18.04.2001 and the petitioner approached this Court after a lapse of 4 years, and therefore, the Writ Petition is liable to be dismissed on the ground of laches.

7. On this aspect we have given serious consideration. Since the petitioner has been pursuing other remedies by way of filing contempt case and consequent orders passed by the authorities, the petitioner cannot be found fault with in not approaching this Court within the time. Under those circumstances, we find that the writ petition cannot be thrown on the ground of limitation.

8. Coming to the merits of the case, the only ground on which the petitioner was reverted as Attender that he did not complete the graduation as on 18.04.1999. As already observed the petitioner has appeared for the last subject of B.A. degree on 4.4.1999 and this aspect was also brought to the notice of the authorities in his representation, but it was not taken note of. When once the petitioner passed the test and the result was declared in September, 1999 it should be deemed that he passed the degree in April, 1999 itself. Under those circumstances, the petitioner cannot be reverted as Attender.

9. Accordingly, the orders passed by the authorities on 17.04.1999 and 04.07.2001 are not sustainable and the respondents are directed to continue the petitioner as Junior Assistant. However, the petitioner is not entitled for arrears of wages and he shall be restored to his original post forthwith from which date he is entitled to the scale attached to the post of Junior Assistant with notional fixation of pay and allowances.

10. Accordingly, the Writ Petition is allowed. No costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 28.04.2005

ES/NSR

To

1 The District Educational Officer, Nellore District, Nellore.
2 The Commissioner & Director of School Education,
Andhra Pradesh, Hyderabad.
3 The Secretary, State of Andhra Pradesh,
Education Department, Secretariat, Hyderabad.

4 2 CCs to the GP for Services-II, High Court buildings, Hyderabad (OUT)

5 2 CD copies